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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

1400.002

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Application Number

10625878

Filed

07-24-2003

First Named Inventor

Mark Bradford Keener

Art Unit

3689

Examiner

NGUYEN, Tan D.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor.

/WBUSKOP/

Signature

 assignee of record of the entire interest.

Wendy Buskop

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Typed or printed name

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32202

713-403-7411

Telephone number

 attorney or agent acting under 37 CFR 1.34.

December 31, 2008

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.



\*Total of 1 forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re application of:  
MARK BRADFORD KEENER**

**Confirmation Number: 9290**

**Serial Number: 10/625,878**

**Examiner: NGUYEN, Tan D.**

**Filed: July 24, 2003**

**Group Art Unit: 3689**

**For: METHOD AND SYSTEM FOR  
DELIVERY OF INTRASTRUCTURE  
COMPONENTS AS RELATED TO  
BUSINESS PROCESSES**

**Attorney Docket Number: 1400.02**

**MAIL STOP AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REASONS UPON WHICH REVIEW IS REQUESTED**

Applicant filed a notice of appeal and is requesting pre-appeal review because Applicant believes the rejection of claim 1 under 35 USC 103 (a) as being unpatentable over U.S. Patent Application 2002/0169658 (*Adler*) is improper for the reasons stated below. Applicant also believes the rejection of claim 1 under 35 USC 112, second paragraph, is improper for the reasons stated below.

Applicant's claim 1 was amended in response to a non-final office action dated April 25, 2008, and those amendments were entered. This request is in view of the Final Office Action dated September 26, 2008.

Applicant's claimed invention provides a unique process for evaluating the infrastructure of specific business processes through the creation of layer dependency/impact hierarchical models.

The invention provides a significant advantage, in that, the models are evaluated to readily and easily identify the value of services and technical infrastructure components relative to the value of the core business they support (Applicants Specification, Paragraphs [0008 and 0009]).

Applicant's claims teach a system that includes devices for manipulating data, inputting data, and viewing data, a user input device, and a network, wherein the device for manipulating data comprises computer instructions for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy.

Applicant's system includes numerous object layers, which are arranged vertically, creating vertical dependencies, and which are in a constant and static arrangement. (Applicant's Claim 1, as previously amended)

Applicant's system creates a thirteen layer dependency/impact hierarchical model that represents individual technical infrastructure components as they relate to individual business processes.

Applicant's model considers every technical infrastructure component necessary to support any specific business activity, creating a resulting hierarchy that describes inter-dependencies between various technical infrastructure components and their impact on business processes (Applicant's Paragraph [0008]).

In sharp contrast, *Adler* is directed to a system and method for predicting outcomes of business decisions by simulating various decisions over time under varying assumptions about the market and the overall economy (*Adler*, Paragraphs [0002]-[0005]). Applicant's claimed invention is not concerned with making predictions.

In contrast to *Adler*, Applicants claimed invention is directed to evaluating infrastructure in order to make informed organizational decisions and process changes. The claimed invention

is not concerned with changing or modifying businesses goals and decisions, but with evaluating the current underlying infrastructure and technology in relation to the existing business models.

Applicant's claim 1 requires "the device adapted for manipulating data and programs comprises computer instructions for identifying relationships between business processes and technology using a protocol to form a dependency and impact hierarchy." There is no teaching or suggestion found in *Adler* for a protocol for forming a dependency and impact hierarchy.

Applicant teaches a dependency and impact hierarchy is representation of specific technical infrastructure components and their relationship to individual business processes (Applicants Original Specification, Paragraph [0015]).

In contrast, *Adler*'s Figure 3 illustrates the interconnection of a set of tools for creating, running and evaluating a simulation. (*Adler*, Paragraph [0079]). *Adler*'s Figure 5A represents the potential service offerings available in the E-market place (*Adler*, Paragraph [0111]). *Adler*'s Figure 5A merely provides a representation of goods and services companies can offer, and the interrelation of those good and services. Further, *Adler*'s figures are not concerned with the infrastructure of a business.

There is no teaching of suggestion for identifying the relationships between business processes and technology, and there is certainly no protocol to form a dependency and impact hierarchy.

*Adler*'s Figure 12 illustrates a screen shot for a simulation subsystem (*Adler*, Paragraph 0087). There is no teaching or suggestion contained within the figure or the associated text for a protocol used to form a dependency and impact hierarchy, nor is there even a teaching or suggestion to form a dependency and impact hierarchy. Instead, *Adler*'s Figure 12 provides a screen shot of the GUI for a simulation subsystem used to run the disclosed simulations (*Adler*, Paragraph [0085]). Each of *Adler*'s figures 3, 5A, and 12 fail to teach or even suggest the protocol for forming a dependency and impact hierarchy for identifying relationships between business processes and technology.

The novelty of Applicant's invention appears in claim 1, which requires "the object layers [being] arranged vertically creating vertical dependencies and the object layers are in a

constant and static arrangement.” While the final rejection characterizes *Adler*’s Figures 4, 5A, and 12 as showing “layers,” these figures fail to illustrate or even suggest layers.

Instead, *Adler*’s figures model the interaction of the systems used in *Adler* for simulating the consequences of business decisions. Therefore, each of *Adler*’s figures fail to disclose or even suggest layers, like the 13 vertical layers of Applicant’s claimed invention which form the dependency and impact hierarchy.

Further, *Adler* fails to disclose any object layers arranged vertically creating vertically dependencies as required by claim 1. Each layer is a descriptive functional element because the arrangement is based on dependencies and each layer positively serves the function of storing data. This is in sharp contrast to functional non-descriptive material which includes music or a literary. Therefore, Applicant believes the previous Office Action was in error not to giving patentable weight to “the object layers [being] arranged vertically creating vertical dependencies and the object layers are in a constant and static arrangement.”

The claimed invention is concerned with the organization, technology and infrastructure of a business or related businesses. The claimed invention is not concerned with the market or creating simulations in order to predict the results of a course of action.

Applicant’s invention relates to optimizing the current business practice of an entity. The claimed invention does so, through a protocol which is used to form a dependency and impact hierarchy. Applicants claimed invention is vastly different from the method and system disclosed by *Adler*, and *Adler* fails to teach or even suggest those limitations required by the claimed invention.

Claims 1, 4-27 were rejected under 35 USC 112. Specifically, element (f), sub elements (i)-(xiii), were rejected as vague alleging it is unclear whether the data of (i)-(xiii) is being used.

However, Applicant believes, as claimed, each of elements (i)-(xiii) are clearly layers of memory which are always present in the claimed invention (*See* Applicants Original Specification, Paragraph [0008], [0009] and [0015]). Each layer is utilized in the claimed invention, in that each layer, as claimed, is available to receive data. Applicant believes the claim is not rendered indefinite by the possibility that a layer may not be utilized because the

claimed invention requires each layer to be available (*See* Applicants Original Specification, Paragraph [0025]).

Applicant respectfully requests reconsideration of this 112 rejection and of this application.

Date: December 31, 2008



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